

In re application of: Robert Manuel Carmichael  
Serial No. 09/730,116  
Page 8

REMARKS

This Communication is responsive to the Office Action dated August 13, 2007.

Claims 2-13 and 16-20 remain pending in the application. No new matter has been inserted. The claims remain unchanged. Applicant respectfully requests reconsideration of the Examiner's rejections and objections.

Requirement for information under 37 CFR §1.105

Applicant notes the Examiner's request for additional information and below seeks to answer the Examiner's questions in accordance with the guidelines provided in the Office Action.

Initially, Applicant notes that there is a fundamental mistake that applies to all of the questions, which is the reference of the December 1999 issue of Skin Diver as being an advertisement for the ACB System. This characterization of the advertisement was made by Joseph Stella, who is not associated with Applicant or any of Applicant's companies. In fact, Mr Stella's company was in litigation with Applicant (or Applicant's companies) and his affidavit was prepared and filed in such litigation. Upon a review of the advertisement, it is readily seen that the Skin Diver advertisement is not an advertisement for the ACB System and makes absolutely no mention of such system. The entire page from the Skin Diver advertisement concerns companies to which Applicant Carmichael is involved with. In the Extreme Exposure ("Extreme") advertisement (lower left corner), a rechargeable Explorer Pro light is advertised and described. Only upon a close up inspection (preferably with a magnifying glass) of the picture showing the lights can one possibly even see a side release buckle. The weight/ballast member, pouches, receiving pockets are not viewable. There is no

text or discussion in the advertisement describing the side release buckle or the entire ACB system. Rather, the advertisement only describes the Explorer light as that is what the advertisement is for, not an ACB system. Additionally, the action demonstrated in the picture is for use of the light and light switch, and not for releasing weight or ballast. Accordingly, Applicant incorporates by reference the above comments with respect to the below answers to the Examiner's questions.

Question (a) - Again the ACB system is not advertised in the December 1999 advertisement. Only a small portion of the system appears in the picture (in nearly unviewable condition without the benefit of a magnifying glass). Applicant also notes that Applicant is seeking a patent for several variations of the ACB system.

Question (b) - Again an ACB system is not shown in the December 1999 advertisement, only a component of the ACB system appears in the figure (albeit in a near unviewable appearance without the use of a magnifying glass). Applicant's drawings and specification describe several variations of the ACB system

Question (c) - Again there is no ACB system shown in the December 1999 advertisement. As previously testified by Applicant in Applicant's earlier declarations, changes were made to the system during the year 2000.

Question (d) - Information regarding manufacture of the prototype is not readily available. No prototype was given, exhibited, sold or otherwise made publicly available to third parties prior to December 5, 1999.

Question (e) - Again the ACB System was not advertised in the December 1999 issue of Skin Diver magazine. Additionally, as it cannot be seen (even with a magnifying glass) what is

In re application of: Robert Manuel Carmichael  
Serial No. 09/730,116  
Page 10

internally inside the area for the weight pockets, Applicant cannot answer whether the system was inoperable or subject to fundamental operation defects. The ACB system is not shown in the advertisement. Rather an Explore light assembly is what is advertised.

Question (f) - As mentioned above and in earlier Declarations, changes were made by Applicant to the ACB system in 2000.

Question (g) - Again, there is no ACB system described, or even shown, in the December 1999 Skin Diver advertisement.

Question (h) - Again no ACB system advertisement described. Additionally, Applicant does not have information readily available to answer this question regarding magazine distribution issues.

Question (i) - As to ACB systems, no advertisement in December 1999 or before.

Question (j) - As to ACB systems, no advertisement in December 1999 or before.

Question (k) - No.

Question (l) - No.

Question (m) - No.

Question (n) - Again no ACB System was advertised in December 1999. With respect to offers for sale prior to December 5, 1999, Applicant answers none.

Question (o) - Again no ACB System was advertised in December 1999. With respect to offers to buy prior to December 5, 1999, Applicant answers none.

In re application of: Robert Manuel Carmichael  
Serial No. 09/730,116  
Page 11

TERMINAL DISCLAIMER

Applicant notes the Examiner's obviousness-type double patenting rejection with respect to claims 2-6, 12, 13 and 16-18. Applicant is prepared to file a Terminal Disclaimer and wishes to address the common ownership issues prior to preparing and filing the Terminal Disclaimer. Ownership to the '480 Angelini et al patent is reflected in the records of the Patent Office as being with Johnson Outdoors, Inc. However, despite record ownership to Johnson Outdoors, Applicant receives royalties from Johnson Outdoors for sales of product falling under the claims of the '480 Patent. No royalty payments are made to Johnson Outdoors from Applicant. This Agreement was made of record with Applicant's Petition filing in November 2002, in the instant application. Accordingly, Applicant retain rights from the '480 Patent and is the party, between Applicant and Johnson Outdoors, that receives the royalties from sales of relevant product. Given such circumstances, Applicant inquires of the Examiner, whether Applicant's rights with respect to the '480 Patent satisfy the common ownership requirement for filing a Terminal Disclaimer. If so, Applicant will immediately file such a disclaimer for the instant application.

Applicant has completely responded to the August 13, 2007 Office Action. Favorable action is respectfully requested. Any additional charges, including Extensions of Time, please bill our Deposit Account No. 503180.

Respectfully submitted,

/Daniel S. Polley/  
Daniel S. Polley, Reg. No. 34,902

**CUSTOMER NO. 44538**